

Cascade Public Schools

Elsie E. Krause
Superintendent

District No. 422
Cascade, Idaho 83611-0291
Valley County

Anne Stilwill
Dean of Faculty

Bev Davenport
Counselor

Telephone: (208) 382-4227
Fax: (208) 382-3797

Pal Sartori
Dean of Students

This letter of appeal refers to a USAC Administrator's Decision on Appeal for Funding Year 2001-2002 dated October 12, 2006. The relevant data is:

Form 471 Application Number: 254037
Funding Year: 2001-2002
Applicant's Form Identifier: 471-2
Funding Request Number: 633827
Billed Entity Number: 142699
FCC Registration Number: 14061295
SPIN Name: AT&T

Case for Appeal:

A. Chronology of Events

December 11, 2000: I submitted FCC Form 470 #628480000328260 for "Basic telephone service only", specifying in Block 2, item 7 that "This Form 470 describes a multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.

January 18, 2001: I submitted FCC Form 471 #254037. In block 5, I specified the following incorrectly:

Item 12: 470 Application Number: 628480000328260

Item 15: Contract Number: MTM

Item 20: Contract Expiration Date: (Blank)

Explanation of errors: I specified my 470 form (#628480000328260) in Item 12 because there was no initiating 470 form for the contract which was signed on June 22, 1997, but my form 470 indicated this as noted in the 12/11/00 entry. In item 15, I specified MTM (month-to-month) because we were receiving monthly billings from the provider, but the price structure was set according to the terms of the contract negotiated between the State of Idaho and the provider (AT&T). The number of the contract was SBP020. I believe Item 20 was blank because the program didn't allow for entry of a contract number if Item 15 was MTM. The original contract expiration date was June 22, 2000, but there was a

provision for two one-year extensions upon mutual agreement. These extensions were executed, so the contract expired on June 22, 2002.

October 2005: Dennis Nielsen (Schools & Libraries Division, Associate Manager-Program Compliance, COMAD Team), discovered my error and inquired whether there was a 470 filed at the state level. I contacted my State Department of Education and was told that form 470 #850080000400067 established the state contract in effect during FY 2001. I passed this 470 number along to Mr. Nielsen. I should have realized that there was no originating form 470, because the contract was negotiated prior to July 10, 1997. In the intervening period of almost 5 years I had forgotten the details, and the readiness with which State Department of Education provided the number instilled enough confidence in me that I did not verify the information.

March 2006: Demand Payment Letter received. Letter cited the fact that the 470 application number I had provided to Mr. Nielsen (#850080000400067) was for a contract that was not in effect until FY2002. I filed an appeal to USAC, acknowledging my mistake, and stating that there was no originating 470 form, since the contract was finalized on 6/22/1997 – before E-rate. That contract was contract # SBP020 and it was negotiated between the State of Idaho and AT&T following a competitive bidding process. Information about the contract can be found at <http://adm.idaho.gov/purchasing/contracts/Telephones/cpo129202.pdf>.

And a contact person is:

Cheryl Dearborn
State of Idaho, Department of Administration
DITCS, Telephone Services Program Manager
E-Mail: cheryl.dearborn@adm.idaho.gov
Phone: 208-332-1845, Fax: 332-1882, Cell: 890-5479

In the appeal, I also stated that we would not send payment until we received word on the status of the appeal, as advised by USAC personnel (see notes for USAC support case #21-392974).

October 2006: I received a “Demand Payment Letter Second Request”, “Notice of Withholding of Action” and “Administrator’s Decision on Appeal” from USAC. The decision on the appeal was “Denied,” with three points of justification. In the next section I will respond to each point.

B. Response to Denial.

1. The first justification of denial given was

After a thorough review of the appeal and all relevant supporting documentation, it was determined that Form 470 (Application Number: 6280000328260) was listed as the establishing 470 for this funding request. This

470 is filed for a pre-existing contract, with no service categories checked and the request is listed on the Form 471 as a month-to-month service which requires a Funding Year 2001 Form 470 to be filed that posted the requested service. According to your records, it was determined that during the COMAD review process you were contacted and asked to verify the correct establishing Form 470 for this request and you responded by submitting documentation showing that the correct form is Form 470 (Application Number: 850080000400067). It was determined that this 470 was filed by the state for Telecommunications Services but was filed seeking bids for services to be supplied within Funding Year 2002 which is outside the funding year on the above Form 471. FCC rules require that except under limited circumstances, all eligible schools and libraries shall seek competitive bids for all services eligible for support. Since the services for which you sought funding were not properly posted to the website for competitive bidding, the commitment has been correctly rescinded in full and USAC will seek recovery of any disbursed funds.

Rebuttal:

The information provided here is accurate as far as it goes. The information I presented in my appeal is completely ignored. In fact, there was no originating Form 470 for the contract because the services received were from a contract established by a competitive bidding process between the State of Idaho and AT&T on June 22, 1997 – before the 470 process existed. Most other school districts in Idaho that received Erate reimbursements during FY2001 were purchasing long distances services from AT&T under the same contract.

2. The second justification of denial given was

In the Form 470 that you submitted (Application Number: 628480000328260), you checked item 7d, indicating that your Form 470 was describing “a multi-year contract signed on or before 7/10/97 but for which no Form 470 has been filed in a previous program year.” Since this indicated that your Form 470 fell within the first exception described above, SLD did not post your Form 470 on the web site. However, the Form 471 you submitted to SLD indicates that you are seeking support for tariff or month-to-month services. While these types of services may not be subject to a contract, they do need to be competitively bid for each funding year. Therefore, your Form 470 requesting support for these services should have been posted on the web site. Consequently, SLD denies your appeal because your application did not comply with the competitive bidding requirement that your Form 470 be posted on the web site for 28 days.

Rebuttal:

Again, my appeal was ignored. The Form 470 I filed (Application Number: 628480000328260) was correct. It was the Form 471 that was in error (see January 18, 2001 entry in Chronology of Events above). Contract SBP020, between the State of Idaho and AT&T was established through a competitive bidding process on June 22, 1997.

3. The third justification of denial given was:

Your Form 470 was not posted on the USAC web site because you indicated in your Form 470 that it was not necessary for SLD to do so. FCC rules require that except under limited circumstances, all Forms 470 received be posted on the web site for 28 days, and that applicants carefully consider all bids received before selecting a vendor, entering into an agreement or signing a contract, and signing and submitting a Form 471. 47 C.F.R. §§ 54.504 (a) and (c). These competitive bidding requirements help to ensure that applicants receive the lowest pre-discount price from vendors. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, p. 10098; FCC 97-246 ¶ 9 (rel. Jul. 10, 1997). The only exceptions to the posting requirement are for: (1) contracts signed on or before July 10, 1997 for the life of the contract; and (2) contracts signed between July 10, 1997 and before January 10, 1998 (the date on which the web site became operational) for services provided through June 10, 1999. 47 C.F.R. § 54.511 (c) and (d).

Rebuttal:

Yet again, my appeal was ignored. Contract SBP020, between the State of Idaho and AT&T was established through a competitive bidding process on June 22, 1997, within the time-frame stated as “exceptions to the posting requirement”. For further information on the contract, please see

<http://adm.idaho.gov/purchasing/contracts/Telephones/cpo129202.pdf> or contact:

Cheryl Dearborn
State of Idaho, Department of Administration
DITCS, Telephone Services Program Manager
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C. Summary:

I freely acknowledge that I made a mistake by designating “month-to-month” services on my 471 form, rather than referencing the contract number and stating that the contract was settled before the posting requirement was in effect. I further erred in providing an incorrect Form 470 number to Mr. Nielsen when he reviewed my case almost 5 years later. I was acting on information provided to me by my State Department of Education. I wonder why Mr. Nielsen did not point out this obvious error and give me a chance to correct it before initiating the Demand Payment process.

I have several further concerns about how USAC has handled this review process. My first concern is why I am receiving threatening mailings from USAC such as the “Past Due Notice” and the “Notice of Withholding of Action” both dated 10/13/06 when the “Administrator’s Decision on Appeal” was dated 10/12/2006. The “Past Due Notice” actually arrived first via priority mail. I was assured by USAC staff that it was not necessary to make payment while an appeal was under review (see USAC case #21-392974). My

second concern is why the case I advanced in my previous appeal with USAC seemed to be completely ignored, as evidenced by the fact that none of the points were mentioned in the denial explanation. If the appeal process cannot be used to correct initial filing errors, then it should be stated at the outset, rather than putting me through a futile appeal process.

At issue here is \$792.38. At this point, with the time spent gathering data, filing forms, responding to reviews and drafting appeals, my school district is near the break-even point if the appeal is approved. I realize that auditing is necessary to guard against program abuses, but at no time did we try to gain reimbursement we were not entitled nor for expenditures inconsistent with the purposes of Erate.

Please consider my appeal in the light of common sense, rather than denying funding based on my misunderstanding of filing directions.

Sincerely,
Christopher P. Hinze
Teacher/ Technology Director